

SOME NEW BOOKS.

The Constitution and the Civil War.

For one of the most valuable contributions to our power of measuring the effects of the Civil War on the constitutional history of the United States we are indebted to Prof. John W. Burgess of Columbia University, the author of the two volumes collectively entitled *The Civil War and the Constitution*. (Scriveners). In the preceding number of "The American History Series," the number devoted to the so-called "Reconstruction Period" the same author discussed the "Missouri Compromise and the Missouri Question," compromise and culminated in the secession of most of the slave-holding States. The volumes now before us carry the narrative to the concluding act of the war, to wit, Gen. Kirby Smith's surrender of all the Confederate forces remaining west of the Mississippi. We should note at the outset that the writer's aim is two-fold: it is not merely to set forth the constitutional results of the war, but to set forth the results of the war on the constitution, but also to give a succinct account of the war itself. This is to say, he offers us at once a constitutional history and a military history. The conclusions to which he is led as a professor of political science and constitutional law will, for the most part, be found embodied in the first seven chapters of the first volume and in the sixteenth and twenty-eight chapters of the second. The ultimate consequences of the war on the legal and political history of the country will be traced out by Prof. Burgess in the concluding volume of the series, which is to be allotted to "Reconstruction and the Constitution."

After a preliminary chapter which are portrayed as the personalities of Davis, and Douglas, the representatives of the three doctrines which met in the Presidential contest of 1860, the author proceeds to inquire how much anti-slavery sentiment existed in the South between 1857 and 1860. The author's examination of this subject, which, as Prof. Burgess points out, is one of the most neglected parts of our history. We begin by recalling a fact not mentioned in these volumes, though, of course, it received due attention in the book of Middle Place. The fact, namely, that in 1857, when 1857 H. S. Foote was elected Governor of Mississippi over Jefferson Davis on an anti-secession platform, and that the convention of that State held in November of the same year declared the Alloged right of secession to be entirely unjustified by the Federal Constitution. Foote himself believed that this declaration put at rest forever the question of secession in Mississippi, and he avowed in the United States Senate that no man with secession sentiments could be elected to the most insignificant office in his country. However, various events, such as the infraction of the Fugitive Slave law, the struggle in Kansas, the publication of "Uncle Tom's Cabin," the John Brown raid and the election of Lincoln by a sectional minority, intensified the feeling of sectional animosity, and, as we shall see, regards the John Brown raid as probably the principal factor in engendering disunion sentiment in the South. Meanwhile, let us note what he has to tell us about the existence of anti-slavery sentiment in the slaveholding States. He says, "The apprehension of a new slave uprising and race war

and race war. Our authors hold that the most generous of our states will not attribute a direct interest in slave property to over two millions of the eight millions of whites inhabiting the slave-holding Commonwealths in the sixth decade of the nineteenth century. According to the census of 1850 there were in those States about 325,000 slave owners. If each one of these be counted as the head of a family comprising five or six white persons we obtain something like the suggested aggregate of whites interested in slave property.

It follows that some six millions of whites in the South had no such interest, and the question is what their feelings were with regard to slavery. It is hard to determine what their feelings were for two reasons: In the first place, the press of the South was either in the hands of the slaveholders or in their pay. Consequently, the anti-slavery sentiments in the South left no such literary results as would enable us to gain any definite knowledge of their character. In the second place, the development of these sentiments received a rude shock in 1850 from the Harper's Ferry massacre; the shock being received before they had gained sufficient strength and clearness to manifest themselves decidedly, and, in fact, before the mass of the people entertaining them knew that they were anti-slavery sentiments. Prof. Burgess, however, for his part thinks that no one who had any personal acquaintance with the South during the period immediately preceding John Brown's raid will dispute that such sentiments existed and were becoming formidable.

The author's view is that the hostility to slavery, or, rather, to the slave owners at the South up to 1850, was chiefly social, but in some degree, also, political. It is pointed out that in some portions of the South a certain town civilization had been developed, and with it a bourgeoisie had been evolved which had recognized the value of its local soil fertility, and the place of its order of life. "Large cities were indeed, few in number, but throughout the whole of Kentucky and Tennessee, and in the major part of all the other Southern commonwealths, a very large number of handsome, fairly enterprising and prosperous country towns had grown up, where there resided lawyers, merchants, bankers, teachers and the like, who were anxious to see their property interest in the perpetuation of slavery, who felt their own intellectual superiority to the country squires and their fox-hunting, horse-racing, quarrelsome sons and who, consequently, asserted social independence of them and social equality with them. There were constant social feuds between the young men of the country and the sons of the squires in athletic contests, and sometimes in intellectual contests, but chiefly over the fair ones of the town, who, in spite of their urban residence, rather declined to look with more favor upon the dashing knights of the country than their father in even refused to think that the country squire and his thoroughly fair complexion of the children of the Middle Ages, were any less worthy of the name of noble which prevailed in some parts of the South. He could only find a clear perception on the part of the young bourgeoisie that the power of these country squire lay in the institution of slavery to have turned their society against that institution. Indeed, the merchants of the Middle Ages, and the bourgeoisie, were so constituted that their pecuniary interests were suffering from the system of plantation slavery. The success of the great plantations had acquired the lucrative habit of purchasing their supplies directly from the wholesale dealers in Northern cities, and the smaller slaveholders had begun to do the same. The merchants of the Southern States were therefore losing prices for their supplies. These merchants had their towns made

see that a large population of small farmers and townspeople would be more profitable to them than the oligarchy of plantation lords with their retinues of slaves.

bords with their retinues of slaves. While, at the stage of the drama reached by the Breckinridge administration, the hostility between the *bourgeoisie* and the planters was mainly social, it had, nevertheless, exercised some influence in determining political preferences. Those townfolk who were inclined to give political expression to their dislike of the slaveholding planters went, first, with the Whig party, then with the so-called Know-Nothing party, and, lastly, with the Republican Union party. The slaveholders who belonged to the Whig party were generally men of superior intelligence and tender-hearts, who ruled their slaves in mercy and kindness, felt compassion for their condition and were not averse to considering plans for their improvement and for their ultimate emancipation. In a word, the Whig party in the Southwest was not a pro-slavery party, in the same sense as the Democratic party in the same section. It looked upon slavery as a temporary necessity and entertained the hope of its eventual extinction. The fact is recalled that John Bell of Tennessee made a stand against the repeal of the Missouri Compromise in 1854, and that he subsequently undertook to reorganize the Whig strength in the South, and to hold the party true to its quasi anti-slavery principles. Prof. Fiske thinks that the signs were quite favorable to such a reconstruction in 1858. We are also reminded that at that juncture there appeared a significant revelation of the feelings of the *bourgeoisie* in the slaveholding States. Hinton Rowan Helper, the author of the "Impending Crisis of the South," though his North Carolina citizenship was repudiated by the Senators from that State, described himself as a native of the South, born and bred in North Carolina, of slaveholding parents, while he himself and his family were mercantile. He was, he said, a Southerner in instinct, thought and habits, and had the desire and purpose to live and die in the South.

It was to his Southern brethren that Helper addressed himself, and he professed a wish "to do something to elevate the South to an honorable and powerful position among the enlightened quarters of the globe." Prof. Burgess admits that the language of Helper's book was generally too violent, that it contained "exaggerations and threats were indulged in with a frequency and to a degree that gave the composition an incendiary flavor. He holds nevertheless, that Helper's denunciations of the great slaveholders were an approximately fair expression of a quite general feeling among the *bourgeoisie* of the South," and "it is true," as John Brown's raid, the "insanity" would probably have developed into an attack upon the institution of slavery itself, as it did in Helper's mind. Any pressure from without, however, for the hastening of such a development would be certain to call forth a spirit of resentment that would ally internal strife and prevent further progress. "The feeling which had been from the very cradle of the slavery class in the Middle South," Prof. Burgess thinks it may be said with truth that in 1858 slavery had little strength in Delaware and Maryland, and no great strength in Kentucky, Tennessee, Missouri, western Virginia, North Carolina, northern Georgia, northern Alabama and northern Mississippi. "Moreover," he writes, "the South was on the decline." These facts, however, were not then appreciated at the North. The North then judged the sentiments of the South only, or almost only, by the speeches and votes of the Southern Senators and Representatives in Congress, and by its slavery-subservient press. The great majority of the facts, on their part, and the author's opinion, were anxious to bring matters to a crisis before the development of hostility close around them should proceed further.

II.

Prof. Burgess is convinced that John Brown's raid put a summary stop to the evolution of anti-slavery sentiment in the slave-holding States. He points out that there was one feeling which the white population of all classes shared in the South, and that was the fear of slave insurrection. Here the author is right. The fear of the slaves, that what hostilities they manifested against the whites was directed chiefly against the non-slaveholders and the poorer slaveholders. The trait, though curious, is intelligible. "The richer slaveholders lived in greater state, of course, wore finer raiment, rode in more splendid equipages and had more courtly manners. Such masters had only to exercise a little friendly consideration and reverence and good will for their slaves. Moreover, the patrol duty was imposed chiefly upon the commoner whites. Thus, while the master granted a pass to the slave, it was the poor white who held him up, examined it, and if it was not satisfactory imposed the stripes. Hence the non-slaveholders and the smaller slaveholders knew well that a servile insurrection would be to them as a sword of Damocles, even more dangerous than to the great white owners. If, therefore, the fear of a 'beast rising,' as they were accustomed to call it, could be excited and sustained in their breasts, the developing social conflict between them and the great slaveholders would be repressed, and instead of it they would become conscious of a solidarity of interest with the slaveholders against the negroes, which in great measure would be the foundation of a projected increased and more widespread anti-grad sentiment in respect

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ing the Harper's Ferry raid, and of the disquieting effect produced by these revelations on cool and impartial minds. They seemed to show that there were many respectable people at the North who had been willing to put the means of doing mischief into the hands of desperate men, in ignorance of how these means were being employed. Such revelations were, of course, immensely disquieting to Southern minds that were not cool and impartial, and a majority of Southern minds, or for that matter, of minds everywhere, belonged to this class. Another fact is recalled, namely, that, long before the report of the state committee was published, things much more disquieting had occurred in connection with the outrage than the revelations of the report would have been, had these been made in November, 1859, instead of six months afterward. The reference is to the demonstration indulged in throughout the country at the time of the execution of Brown's execution. It is well known that Brown and his band had murdered five men and wounded some eight or ten more in their criminal movement at Harper's Ferry. Prof. Burgess's comment on their crime is that, "if they had done nothing more than kill the free negroes, Hayward, they would have been deserving of nothing but the punishment for murder and the execution of all decent men."

"Add to this the consideration that Brown certainly intended the wholesale massacre of the whites by the blacks, in case that should be found necessary to effect his purposes, and it was certainly natural that the tolling of church bells, the blowing of whistles, the waving of John Brown flags, the draping of houses, the half-masting of flags, &c., in many parts of the North, should appear to the people of the South to be evidences of a wickedness which knew no bounds, and which was bent upon the destruction of the South by any means necessary to accomplish the result." "Especially did terror and bitterness take possession of the hearts of the women of the South, who saw in slave insurrection not only destruction, but that which to feminine virtue is a thousand times worse than the most terrible death. For those who would make such a movement a synonym with such a movement could exist such a movement, the women of the South felt a hatred as undying as virtue itself. Men might still hesitate, and consider, and argue, but the women were united and resolute, and their unanimous exhortation was: 'Men of the South, defend the honor of your wives and your slaves, your sisters and your daughters! It is your highest and most sacred duty!'

Prof. Burgess denies that it was true to the extent and degree generally assumed at the North that the leaders among the slaveholders knew that there was no such danger of slave insurrection as the masses supposed there was, and also knew that the sympathy at the North for any such movement was so feeble for anybody who would take part in such a movement, was not one thousandth part as great as the masses at the South believed it to be. "The leading slaveholders had no such clear knowledge of the character and impulses of their slaves, or of the intentions of the North as subsequent opinion has attributed to them. They themselves were not wholly free from the feeling that the masses of Southern whites, and they could not have created this terror among the masses, except for the actual attempt to excite slave insurrection, and the apparently widespread sympathy for the same in many parts of the North. From the Harper's Ferry outrage onward the conviction grew upon the minds of those who were in the South must stand together, and must harmonize all internal differences in the presence of the mortal peril with which, as a race, they believed themselves threatened. Sound development in thought and feeling was arrested. The follies and the hatreds born of fear and resentment now assumed the place of the old feelings of kindness. War and bloodshed became a necessity for the relief of burning hearts."

Is the Harper's Ferry raid to be palliated in retrospect because, but for it and the feeling of resentment and alarm which it provoked, the institution of slavery might have been perpetuated until this day. Nothing could be more emphatic than our author's declaration that "the realists are fatalists or Jesuits in philosophy, we are bound to condemn this crime to the end of time and execrate the committers of it, even though we should ascribe to it the emancipation of the bondmen. It is an affront to Divinity itself to assert that the world's civilization cannot be realized without blood, crime and sin. It is the cardinal fallacy of Orientalism to hold that what has happened must have been inevitable, not only as to the end secured but also as to the means by which the end was secured. It is the passionate haste of sinful man which dares to hurry this glory of Freedom to the employment of means which rob the plane of their glory and their divinity."

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As we shall see presently, Prof. Burgess conceives that the Southern States had no legal right to secede, but he admits, what is often disputed, that, if the existence of such a right is conceded, their mode of exercising it was entirely regular. It is well known that the Southern States had no alternative but to criticize the forms and methods employed by the Unionists in passing resolutions, "ordinances" and creating the new "Confederacy." The gist of these criticisms is that these things were done by State "conventions" instead of by the direct act of the people, so, it is alleged, our system of government is not a pure democracy. In his opinion, the criticism is ill founded. The Constitution of the United States was framed by delegates selected either by State Legislatures or by conventions within the States, and ratified by a convention within the States, and his provision for future amendments made only of Congress, State Legislatures, or by conventions within the States, so the basis for offering criticism is the organic law. The Constitution of the United States is not a thing of a direct appeal to the people in any of these cases. The amendments therefore followed our constitutional procedure in passing their amendments and amending their system of government. They argued that so their own constitution passed to the United States Government by the acts of amendment within the several States, they could withdraw from it the same manner, so that they must so withdraw them, if they withdrew them at all, and that as they had not done so, they were bound to remain in the Union of 1787 by the acts of amendment within the seceding States. They could withdraw themselves from the Union of 1787 in the same manner, so, must so withdraw themselves if they withdrew at all. They argued that the amendments had never any right to do what they did, the manner in which they accomplished it cannot be successfully denied.

secessionists had no legal right to withdraw from the Union. He contends that the provision of the Constitution which declares that the "Constitution of the United States and the laws of the United States which shall be made in pursuance thereof and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land," contains by implication the prohibition of the power of any Commonwealth of the Union to withdraw itself from the jurisdiction of that "supreme law of the land." It will be remembered that the Unionists support their assertion that there had a legal right to withdraw from the Union cited the Tenth Amendment of the Constitution, which provides that powers not delegated to the United States by the Constitution, nor prohibited by it to the "States," are reserved to the "States" respectively, or to the people. In this connection they argue that power having been assigned to the United States to forbid secession, and no prohibition having been placed by the Constitution on the right of the States to secede, the right was reserved to the "States" or to the people by the Constitution itself. Prof. Burgess considers it evident to any mind that the Congress with all proposed amendments never intended to reserve by it the power of secession to anybody. The members of that Congress, he says, were manifestly thinking only of the powers of local government in each Commonwealth, and of the civil rights of the citizens therein, when they drafted the articles. It is at the same time admitted that in 1860 a large number of the people of the Southern States founded sovereignty with the residuary powers of government, and recognized what they conceived to be a certain kind of sovereignty as belonging to the individual "State." "Many of the secessionists," says Prof. Burgess, "honestly befooled themselves, as well as befooled others, by their sophistries and confused premises. The majority of the secessionists were undoubtedly sincere in the belief that they were right in principle."

IV.

In our author's opinion Congress went much too far in its final effort to conciliate the seceding States. It may be remembered that in the morning hours of March 4, 1861, the Senate adopted the House resolutions which had been framed for the purpose. Besides making other important concessions, these resolutions expressed the willingness of the Republican leaders to "cooperate" with the "States" where it existed by an unchangeable amendment to the Constitution; the Republicans voted for a proposed amendment providing that no future amendment to the Constitution should ever be made which would empower Congress to interfere with slavery in the States, and voted for it in such numbers as to adopt it by the requisite two-thirds majority, and, that, too, after the Senators "Pro-Slavery" had withdrawn from the Southern "States." Mr. Burgess submits that to the historian who regards the course of world events from the vantage grounds of the present, and to the modern politician, this concession on the part of the Republicans appears too generous. "They [the Republicans] never should have been willing to withdraw anything from the amending power lodged in the Constitution. This meant nothing less than the confederating of the political system of the United States, and the preservation of political peace by a peaceful method. It meant a return to the system of 1781 as to the excepted subjects. It meant the reversal, in principle, of the chief advance which we had made in the development of our Constitutional law from the system of 1781 to that of 1861. No publicist who has perceived the movement of modern political history toward the development of organized nations could for one moment approve the concession made by the Republicans. In view of this, he could demand that even the existing exceptions from the amending power be expunged from the Constitution, and that the amending power itself should be so formulated as only to guard the sovereign power

the nation from hasty and inconsiderate action, but never so as to thwart its deliberate and well-determined purpose." The passage just quoted will be found on page 134. In even stronger language on page 99 the author had expressed his objection to an irreparable Constitutional provision, like that which would deprive the South of its equal representation in the Senate without its own consent. "An irreparable, unamendable provision in a Constitution in regard to anything is a rotten spot, which threatens decay to the whole Constitution. It is a standing menace to the peaceable development of any political system. It is the most direct contradiction possible of one of the most fundamental principles of political science, the principle of the unchanging Constitution, the fully organized sovereignty of power in the political system of a country, must be able to deal with any and every subject. If matters are excepted from its jurisdiction, then they can be dealt with only by revolution that is by the forcible intervention of superior physical power, not recognized by existing law. In other words, the withdrawal of any subject from the ascending power of the destruction of Constitutional development, the destruction of the subject, and the destruction of Constitutional development in general will work the inevitable overthrow of the Constitution and Constitutional Government." In spite of the different view propounded by Senator Trumbull in the winter of 1860

Prof. Burgess insists that "politics are progressive, and if they cannot progress through the regular form of amendment, they will do so through the violent form of revolution. It was this historical reality which moved the framers of the Constitution to construct the regular method of amendment as a Constitutional provision, the most important provision of the Constitution and how the proposal to withdraw from its operation, the most serious and burning question of our political culture, was a proposal to set the clock of ages back a century and more, so far as the advancement of liberty and of the science of government was concerned. It was an attempt to thwart the purposes of the fathers but slightly poorer which conducted the development of our future."

After that the Republican States grouped the withdrawing offer made by the Disunion leaders in Congress during the summer hours of March 4, 1861. Accompanying as the offer was, the refusal of it was still more astounding. "I take this point out without apology," Whittier considered that there was another great party at the time, the seceding element as there was at the time of the beginning of the Revolution. "The seceding party was ready to yield to almost any demand as the price of union that the seceding might make. It is indeed difficult to explain the inconsistency, as well as the passionate precipitancy of the seceding element, except upon the old French maxim that 'When the gods would destroy their first made man, Looking on his works with long and solemn face, Great god of earth, thou saidst: Let him be wiser than he created him.'"

And we can all know now that the spirit of

civilization was working for much more advanced results than the Republicans themselves consciously intended. "The immediate abolition of slavery in the Commonwealth and the thorough nationalization of our political system were consummations far beyond their hopes. They were directed to these results by the madness of the slave states, who, upon the basis of their 'State sovereignty' theory, sought to destroy the Union for the sake of perpetuating and extending the institution of African slavery. Not until then did the Republicans see that both slavery and 'State sovereignty' must go, and in their places universal freedom and national sovereignty must be enthroned."

v.

Prof. Burgess defends Lincoln's Emancipation Proclamation considered as a war measure. He holds that the ethics of war justified the President's purpose to deprive the Confederates of the support of slave labor in their rebellion against the Federal Government and the Union. He considers, further, that the fact that no slave insurrection and no massacre of whites by blacks of such a measure is sufficient proof that such horrible results are probable results of the proclamation, and were not supposed to be such either by the President or by his advisers. It is conceded, however, that from the point of view of existing law the President had no authority to fix the permanent status of the negro who might be provisionally freed from slavery as the result of the enforcement of Lincoln's proclamation. "The military detourship of the President is temporary, and the military measures which are authorized are limited by the period of the necessity which calls them into play. The freedom acquired by the slave in consequence of the President's act could continue legally, after the suspension of the war powers, only by means of some Constitutional provision or of some legislative act warranted by Constitutional provision. The war powers of the President justified his act as a temporary measure, but they did not, and he did not, authorize the legal status of the present civil or political status of anybody."

anybody." The author thinks that the conflict of sentiment and opinion between the Republicans and the Democrats at the North, provoked by the Emancipation Proclamation, influenced the President in some degree in his view of the fitness of Democratic Generals to prosecute the war against slavery. It is well known that on Nov. 7, 1862, McClellan was suddenly ordered to resign his command of the army of the Potomac. General Burnside and the report of Trenton, N. J. "What McClellan would have done in the next few days, if he had been left in command, can, of course, never be known. Whether a crushing victory over the Confederates, ending at once the rebellion before slavery was destroyed, was wanted by all of those who composed the Washington Government may well be suspected. And whether McClellan would have preferred to such a victory with McClellan in command." Prof. Burgess regards this question as "a dark, mysterious, uncanny thing, which the historian does not need to touch, and prefers not to touch."

VI.

In the chapter of the second volume which bears the caption "Interpretation of the Constitution," the author examines the circumstances under which West Virginia was admitted into the Union as a State. We are reminded that the Constitution of the United States permits the erection of a new Commonwealth within the jurisdiction of an existing Commonwealth with the consent of Congress and of the Legislature of the existing Commonwealth. Formally the letter of the Constitution was fulfilled in the case of West Virginia. The establishment of West Virginia upon the footing of a State in the Union proceeded ostensibly upon the basis, first, of a petition for admission from the Union by a convention of the people of the counties of old Virginia wishing to form a new Commonwealth; secondly, of the consent of the pretended Legislature of old Virginia sitting at Alexandria and recognized by the United States Government as the legitimate Legislature of Virginia; and, thirdly, of the consent of Congress. Although, however, the legal forms were observed, it is not to be denied that, when the real facts are inspected, the forms answer rather hollow.

The so-called Legislature of Virginia at Alexandria represented chiefly the very part of the old Commonwealth which was actually the seat of the slave and semi-slave Commonwealth. That is to say, two of the nominal parties to the tripartite agreement required by the Constitution were, virtually, the same party, and the people of the forty per cent. Southern counties of Virginia. Prof. Burgess thinks that it was a pity that the Legislature of Alexandria was composed at all, in the maintenance of the long and the right to stay with the co-operation of the majority of the people resident within a part of a Commonwealth, the secession of which from the Union had been so long and so decided that part from the old Commonwealth established it as a new Commonwealth. When a Commonwealth proclaims its secession from the Union, it is no longer to be considered a 'State' of the Union, but a territory lawfully subject to the Union, and indicated by a rebellious Commonwealth to be a new State, a part of this territory into a new State, with the co-operation of the people inhabiting that part, without regard to those who remain in the old Commonwealth, even establish Territorial Government in such territories without the co-operation of anybody in the creative act. From the point of view of the people of the old Commonwealth it is a great pity that this destructive secession put into practice formally in the establishment of West Virginia.

the fact that in the process of admitting West Virginia as a Commonwealth into the Union, Congress assumed to lay conditions on the new Commonwealth as the price of its admission, which the Legislature did not then lay upon any of the existing Commonwealths. In other words, the doctrine which prevailed in 1862 and which has been followed since, is that the Legislature, that Congress should lay no restrictions upon new "States" as the price of their admission into the Union, which then came to be called "Commonwealths," but that Congress should lay such restrictions upon the original States of which the Constitution did not expressly authorize Congress to dispossess as the price of admission. It was this doctrine which the Legislature of West Virginia adopted in its action toward substituted power. In the book before us this proceeding is not explained from the viewpoint of Constitutional law. But by the use of time and space it is able to point to the impact in the Constitution of the Commonwealth of Missouri in the formation of the new western states. It is this impact which is called the "Missouri Period." You need not all the other Constitutional questions raised by the war will be dealt to the work. The book is a work of the West. Historians and the Commonwealth.

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Early Reconstruction History:

The story of Reconstruction during the Reconstruction Period is often told that Reconstruction has been irretrievably postponed in English a full and trustworthy account of the origin, and early development of the regime. The work is now more good in a history, entitled *The Two First Centuries of Florida History* by Prof. Frank A. Noyes, a translation of the French work by Noyes and is published by the publishers. The work begins with an investigation of the origin

of the Florentine commune and proceeds to describe its first wars and reforms. Then follows an exposition of the first popular Government and of the constitution of the greater guilds, the commercial interests and policy of which are also carefully examined. There are chapters on "The Family and the State" in Italian communes and on the "Enactments of Justice," the book concluding with a delineation of the Florentine republic as it was in Dante's time, with whose death the medieval period may be said to have closed in the Italian Renaissance to have begun. We may say at once that no part of this book could have been written fifty or even thirty years ago. What we have here is the embodiment of the results of Italian and German researches during the last quarter of a century.

Prof. Villari regards it as a certainty that the beginning of a settlement on the site of Florence was made by the Etruscans of Fiesole. He accepts as credible, and even probable, a Micali tradition that Fiesole had established a post on the Arno at a point where the Mugnone runs into the river. Gradually a cluster of cabins arose; these, in time, grew into houses, and, finally, formed a rival town. It was the Romans who converted the town into a city, and the date of this conversion is still unascertained. It is improbable that the event occurred earlier than two centuries before Christ. Florinus, writing in the second century of our era, mentions Florence among the cities which had suffered most in the days of Sulla. Recent excavations, by displacing the soil, have furnished proofs that in Sulla's time the city must have already possessed buildings of no small importance, including an amphitheatre. The restoration of Florence after the serious injuries inflicted on it in Sulla's day is generally attributed to Augustus, who is supposed to have founded thirty-one, and one hundred and twenty-eight colonies founded by him. It certainly must have been a colony in 55 B. C., when, as we learn from Tacitus, it sent a deputation to Tiberius, asking him to forbid the junction of the river Chiana with the Arno on account of the damage this would cause. The evidence of the inscription, however, supports the view that, in spite of the testimony given by Florinus, the colony of Florence was founded, not by Augustus, but by Sulla. We should, at all events, ascribe to the first century B. C. the construction of the oldest circuit of walls which existed during the Roman period. Middle Ages, and some remains of which have been discovered in our own day.

For a long time after the epoch of the barbarian invasions the history of Florence is involved in great obscurity, and what little information is obtainable on the subject, is mixed with legends. Prof. Villari rejects the tradition accepted by Villani that Attila, the Scourge of God, destroyed Florence and rebuilt Fiesole. There is no doubt that the Goths captured Florence at one time, but they did not destroy it. The Lombards took place about A. D. 570, and was followed by two centuries of darkness. There are extant documents belonging to the latter half of the eighth century which allude to Florence as though it had become a suburb of Fiesole. In 860 Charlemagne halted in Florence on his way to Rome, an incident that gave rise to the legend that the rebuilding of the city was his work. There is no doubt, however, that, owing to the greater order and tranquillity brought about by Charlemagne, the city began to recover. In the tenth century, and Florence began to prosper at Fiesole's expense. In 955 the Emperor Otto I. halted in Florence on the way to his coronation by the Pope, and a chronicler attributes to him an imaginary grant of a territory six miles in extent. It is certain that from the Frankish times downward the prosperity of Florence slowly but surely increased. The geographical position of the city proved a great advantage to its commerce. As early as 1024 the Emperor Lothair had proposed Florence with seven other Italian cities

the seat of a public school. The Popes often sojourned there, when popular disturbances expelled them from Rome. Victor II. died in Florence in 1057; so did Stephen IX in the next year; three years later Nicholas II. and his cardinals stayed in the town pending the election of Alexander II. In continual relation with the Eternal City, Florence already began to show the religious and Guelphic tendencies that afterward became such conspicuous features of her history. Toward the close of the tenth century many new churches arose within and without the city walls, and, during the eleventh cen-

city Florence became one of the chief centers of the movement in favor of monastic reform. It was by a Florentine who died in 1073 that the reformed Benedictine order known by the name of Vallombrosa was founded. About this time there was a Duke of Tuscany, and Florence was governed by his military representatives, the *podestà*. The emperor was still under him. In 1076 a famous Countess Matilda, the devout upholder of the Papacy, was mistress of Tuscany, as well as of other territories. Matilda, after the fashion of her predecessors, administered justice in the name of the emperor, presiding personally over the tribunal. In her absence, however, the trials had to be conducted by lay judges. The Countess Matilda may be regarded as the first person to have recognized the pressing signs of civic independence before the Florentine Commune had asserted autonomy. Matilda's sway in Florence must have tended to become shadowy when the city sought to start wars on its own account and to live on profit, albeit still unprofitably, for its own sake. The Countess Matilda, however, was not yet dead, and her influence was still pronounced.

Matilda became more and more identified in her struggle with the Empire; the city must have been left more to itself. This is the time, therefore, at which should be referred the classification and organization of the citizens which so properly find their origin in the *podestà* system, and stand at the central point of the constitution, and a system which could never be abolished, and which still exists.

I cannot but believe the people

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they had regular statutes. These statutes only formulated what had already existed for some time.

As a matter of fact we find, even in the days of Countess Matilda, which may be roughly identified with the last quarter of the twelfth century, the nobles of the Florentine citizens divided and arranged in groups. We see, on the one side, the ancient *schola* surviving from Roman times, but transformed into a guild of arts and trades containing the germs of future greater and lesser guilds; on the other, the *popolo* or *plebs* of the *grandi*, or leading citizens, employees of the future societies of the towers. All the associations already formed the practical basis of the political organization. The principal offices were filled by *grandi* of Matilda's choice. Prof. Villari deems it probable that the people of the *popolo* was reserved, in accordance with medieval practice, to a single family or clan, perhaps to that of the Uberti, who were among the most prominent of the *grandi* of the time. Descendant. A point to be noted is that there was then no hostility, no separation between the great folk or *grandi* and the people, no antagonism of interests and interests. Our author is inclined to believe that some of the *grandi* engaged in the struggle with the *popolo*, and already had begun to fight selfishly, and with the people against the outlying nobles. It was this alliance of all classes of citizens against the outlying nobles, the nobles of business of purpose against a common foe, the rural nobility whose castles barred all outlets for commerce, that then constituted the basis of the Florentine republic. Loyalty, purity and valor were so fervently praised by Dante and the chroniclers.

Countess Matilda, the daughter of Matilda when she died in 1115 left a will bequeathing all her possessions to the Church. This donation, however, could only affect her personal property, and the Empire naturally reverted to the Empire. Hence arose an endless succession of disputes between the Emperor and the Pope, each claiming the right of inheritance, the one as Matilda's universal legatee and the other as her feudal superior. In the year 1155, in the reign of the Emperor Henry IV, to send a representative to assume the Government of Tuscany in his name, but the Papal opposition was so strong that he was obliged to possess to assert their independence, and the general disorder split Tuscany into fragments. Accordingly the representatives of the Emperor and of the Pope met at the head of the feudal nobility of the various *contadi* (countships), and by gathering together the knights of a German party opposed to the cities.

At this crisis Florence, surrounded by the castled nobility occupying the neighboring hills, had to decide on one of two courses. She could either continue to ally herself with the nobles, always been her mortal enemies and were now emboldened by Henry's favor, or to turn to the people, to whom she was bound to render homage to the Empire, which would amount to a proclamation of independence. The latter course was adopted. Florence was the first to renounce of her own strength and recognized that safety could only be gained by force. The change was accomplished in a matter of days. The nobles were expelled. The same women who had administered justice governed the people and commanded the garrison in Matilda's name. The nobles, however, did not consent to rule in the name of the people, and asked its advice in all grave emergencies. The nobles gave an answer in the name of the Committee, which may be said to have leaped into existence unperceived. In Villari's opinion, is why the nobles were not expelled. The historical documents record it in endeavoring to discover unknown events and lost documents which never existed, the solution of which was sought in vain, and was surrounded with imaginary difficulties. We are not to suppose, indeed, that the acquisition of political power by the nobles was implied without any force. It is true that the actual government remained almost intact, but its basis was destroyed. The nobles were not in the name of the people instead of that of the Countess. Moreover, during Matilda's reign the governing authorities had been the nobles, and the nobles had been administrative and judicial posts changed hands from time to time, they had become a part of the nobles, and not a part of the families. Now, however, that the authorities were to be elected by the people, there was a broader, though still somewhat limited, basis. The nobles were not expelled, there was more change of office, and men were removed in turn from one to another, in such a way that the nobles were not expelled. Between the leading families was inevitable. Ultimately, there was a real outbreak, almost a revolution, against the nobles, and the nobles were expelled, and the people were victorious.

An event of great significance in the early history of Florence was the capture and sack of Fiesoli in 1125. The current account makes a commercial distinction between the two cities, and at these points out, however, that there must have been also a conflict of jurisdiction. Many contemporary documents, it seems, refer to the county of Fiesoli as if it were indistinguishable from the county of Florence. Hence it was only natural, it is becoming an important argument, that the death of Henry should seek to dominate over both counties, and it was equally natural that Fiesoli should be violently opposed to the idea. The details of the campaign are unknown to us, but the outcome was the almost total dis-

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